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injury or death can be shown to be due to accidental or unnatural means, this imports that such injury or death is due to external and violent means.¹⁰ Thus, where the insured was found dead in bed with the gas turned on, it was held that his death was due to external, violent and accidental means.¹¹ So also, where the insured froze to death because of a breakdown of his conveyance, and the consequent enforced exposure;¹² and also where the insured died from blood poison, resulting from the bite of an insect.¹³

The word "violent," as used in the policy, does not require that there should be a breaking of tissues of the body; and very slight violence, if any, is necessary to obtain a recovery, if the injury was accidental within the usual definition of the term. Accordingly, it has been held that recovery may be had, under the policy, for death by accidental drowning;¹⁴ or for an injury produced by a strain from lifting.¹⁵ It should be noted, however, that where there is a dormant disease, which is brought into activity by the exertions of the insured, his resulting death is not caused by external, violent and accidental means.¹⁶ This is a very troublesome class of case for the courts to decide. The general rule seems to be that if the disease was due solely to an accidental cause, as ptomaine poison from unintentionally eating unwholesome food, then the resulting death is covered by the policy. But if there was some latent constitutional weakness in the insured, which was so stimulated by his exertions, as to unexpectedly produce his death, there can be no recovery under the policy, because, in such case, the exertion of the insured was not the direct and potent cause of his death. In close cases, the general principle is very difficult of application, and the courts frequently treat it as a matter of fact for the jury to determine.¹⁷

E. L. H.

MORTGAGES—ASSUMPTION BY MORTGAGOR'S GRANTEE—LIABILITY TO MORTGAGEE—It goes without saying that there are few questions in the common law concerning which there has been so great a diversity of opinion as that of the right of a third party to sue on a contract made for his benefit. One phase of this question is that of the liability of a grantee of land subject to a mortgage, who un-

¹⁰ *Travelers' Assn. v. Smith*, 85 Fed. 401 (1898); *Bacon v. Mut. Acc. Assn.*, 123 N. Y. 304 (1890).

¹¹ *Paul v. Travelers' Ins. Co.*, *supra*, n. 9, overruling in part *Hill v. Hartford Ins. Co.*, 22 Hun 187 (N. Y. 1880).

¹² *Travelers' Assn. v. London Guarantee Co.*, 10 Man. 537 (Canada 1895).

¹³ *Omberg v. Mut. Acc. Assn.*, 101 Ky. 303 (1897).

¹⁴ *Mfrs. Acc. Indem. Co. v. Dorgan*, 58 Fed. 945 (1893); *Wehle v. Mut. Acc. Assn.*, 153 N. Y. 116 (1897); but see *Tennant v. Travelers' Ins. Co.*, 31 Fed. 322 (1897).

¹⁵ *Rustin v. Ins. Co.*, 58 Neb. 792 (1899).

¹⁶ *Travelers' Ins. Co. v. Selden*, 78 Fed. 285 (1897).

¹⁷ *Mfrs. Acc. Indem. Co. v. Dorgan*, *supra*, n. 14; *Railway Acc. Assn. v. Coady*, 80 Ill. App. 563 (1899).

dertakes to pay the mortgage. As is said in a leading text, "it is a curious circumstance that though a promise by a third person to pay a mortgage debt cannot be distinguished in principle from a promise to pay any other debt, the question has been to some extent separately dealt with. Perhaps, because the subject of mortgages fell within the scope of equity jurisdiction, the attempt was early made by mortgagees to sue in equity those who had assumed an obligation to pay the mortgage, while no such attempt was made with other debts."¹ However this may be, the problem is recognized as a distinct one, although not unconnected with the larger problem.

In the absence of statutes controlling the question, the decisions show considerable variation, ranging all the way from a refusal to allow the promise to inure in any way to the benefit of the mortgagee, to allowing him a recovery at law for a deficiency arising on the sale of the mortgaged premises. Massachusetts, holding to the strict English view, denies the mortgagee any right to recover because he is a stranger to the consideration.² The other extreme is the law of the great majority of states, the mortgagee being allowed to sue in assumpsit on the promise made to the mortgagor to pay the mortgage.³ Between these two extremes are several intermediate positions. One of these is to consider the third party's right to sue on a promise for his benefit as resting entirely on equitable principles,⁴ the only difference from the preceding view being procedural.

Another large class of cases take the position that the right depends on the principle of subrogation, the creditor being entitled to the benefit of the security obtained by the mortgagor from his grantee. This view is the one followed by the federal courts,⁵ by New Jersey⁶ and by other important jurisdictions.⁷ Under it the right of the mortgagee is derivative, and it therefore follows that any valid defence against the mortgagor is sufficient to bar action by the mortgagee. So, where a mortgagor who is not personally

¹ Pollock on Contracts, Third American Ed., p. 260.

² *Mellen v. Whipple*, 1 Gray 317 (1854); *Creesy v. Willis*, 159 Mass. 249 (1893); *Goodenough v. Labrie*, 206 Mass. 599 (1910).

³ *Hare v. Murphy*, 45 Neb. 809 (1895); *Marble Savings Bank v. Mesarvey*, 101 Ia. 285 (1897); *Wyatt v. Dufrene*, 106 Ill. App. 214 (1902); *Merriman v. Schmitt*, 211 Ill. 263 (1904); *Burr v. Beers*, 24 N. Y. 178 (1861); *Enos v. Sanger*, 96 Wis. 150 (1897). For other cases, see *Jones on Mortgages*, Seventh Ed., Sec. 762, note.

⁴ *Ayres v. Randall*, 108 Ind. 595 (1886); *Spears v. Scott*, 111 Ga. 745 (1900). See also Pollock on Contracts, Third Ed., pp. 244, 263.

⁵ *Kellar v. Ashford*, 133 U. S. 610 (1889).

⁶ *Mount v. Van Ness*, 33 N. J. Eq. 262 (1880); *Eakin v. Shultz*, 61 N. J. Eq. 156 (1900); *Acton v. Shultz*, 69 N. J. Eq. 7 (1905); *Holland Reform School Society v. De Lazier*, 85 N. J. Eq. 497 (1916).

⁷ *Ward v. De Oca*, 120 Cal. 102 (1898); *Osborne v. Cabell*, 77 Va. 462 (1883); *Clement v. Willett*, 105 Minn. 267 (1908).

liable conveys to one who assumes the payment of the mortgage, the promise is not enforceable by the mortgagee.⁸

The question, so far as Pennsylvania is concerned, is one controlled by statute. The Act of 1878,⁹ after providing that a grantee of real estate subject to ground rent, mortgage, or other incumbrance shall not be personally liable for the payment thereof, unless he shall, by an agreement in writing, have expressly assumed a personal liability therefor, or unless there are express words in the deed to that effect, goes on to provide that "the right to enforce such personal liability shall not inure to any person other than the person with whom such agreement is made." It seems that the wording of this statute leaves no room for doubt as to its meaning. The decisions, however, present a very curious development in the construction of this act, and show that, until recent years, the effect of the act was very much involved in uncertainty.

The law prior to the passage of the act is stated in *Merriman v. Moore*,¹⁰ decided subsequently to the passage of the act, but not affected by it for the reason that the act was held not to be retrospective in its operation. In that case the mortgagor's vendee was held personally liable to the mortgagee on the promise made to the mortgagor. The liability is placed squarely on the proposition that the vendor may direct how the purchase money shall be paid, and that it is of no consequence to the vendee whether or not his vendor was liable for the payment. This proposition, which gives the mortgagee a right to sue independent of the mortgagor's rights, is clearly an exception to the general rule in this state as to a third party's right to sue on a contract.

After the passage of the act there seems to have been little disposition to question its meaning until the cases of *Blood v. Crew Levick Co.*¹¹ In deciding these cases the court took the position that the defendant's express covenant to pay might be enforced by an action brought in the name of the covenantee to the use of the holder of the mortgage.¹² If this decision had been accepted as settling the law of this state, the act in question would be a dead letter so far as its practical importance is concerned. The later decisions, however, do not bear out this interpretation. In *Fisler v. Reach*,¹³ the court modified the effect of *Blood v. Crew Levick Co.*, by restricting the right to sue in the mortgagor's name to cases where the consent of the mortgagor has been obtained. Since that case there have been

⁸ *Norwood v. De Hart*, 30 N. J. Eq. 413 (1879); *Klemmer v. Kerns*, 71 N. J. Eq. 297 (1906); *Ward v. De Oca*, *supra*.

⁹ P. L. 205.

¹⁰ *Merriman v. Moore*, 90 Pa. 78 (1879).

¹¹ *Blood v. Crew Levick Co.*, 171 Pa. 328, 342 (1895). See note in 44 *American Law Register*, p. 802.

¹² Pp. 334, 343.

¹³ *Fisler v. Reach*, 202 Pa. 74 (1902).

several decisions¹⁴ which hold the promise of the grantee to be merely one to indemnify the mortgagor, and therefore one which cannot inure to the benefit of the mortgagee.

The latest of these cases¹⁵ arose out of the attempt of the state officials to settle a tax against a corporation which was the grantee in a deed from an individual, the corporation agreeing to assume a mortgage on the premises. The court held that this stipulation, under the Act of 1878, could not have the effect of making the corporation liable to the mortgagee for the debt, but was merely a contract of indemnity between the grantor and grantee, and that, therefore, the mortgage debt was not taxable as corporate indebtedness.

This decision, reaffirming the rule laid down in three decisions¹⁶ within the last six years in cases where the question was squarely presented before the court, must be considered as removing all doubt heretofore existing,¹⁷ and it may be confidently asserted that *Merriman v. Moore*, although frequently cited by courts and text writers,¹⁸ no longer represents the law of Pennsylvania. The result is to give full effect to the obvious meaning of the Act of 1878, and to bring the Pennsylvania law on this subject, by operation of statute, into the same position as that reached in Massachusetts in the absence of statute. It is also worth noting that this result is in accord with the general rule in Pennsylvania as to the right of a third party to sue on a promise,¹⁹ and that the anomalous exception of a promise to pay a mortgage from the rule as to other debts has ceased to exist.

W. W. S.

RECEIVERS—NECESSITY FOR LEAVE TO SUE A RECEIVER—It may be stated as a general rule that a receiver may not be sued without permission of the court which appointed him, but whether failure to first obtain leave to sue affects the jurisdiction of another court to consider and determine a controversy to which a receiver is a party is a disputed question and the cases are in apparently hopeless

¹⁴ *Sloan v. Klein*, 230 Pa. 132 (1911); *Tritten's Estate*, 238 Pa. 555 (1913); *Smith v. Danielson*, 45 Pa. Super. 125 (1911); *Commonwealth v. DuPont Land Co.*, 254 Pa. 446 (1916).

¹⁵ *Commonwealth v. DuPont Land Co.*, *supra*.

¹⁶ *Supra*, note 13.

¹⁷ Even so late as 1914, the following *dictum* occurred in a Superior Court case: "The fact that in the line of the conveyances one of the grantees was not personally liable for the mortgage debt, does not alter or affect the relation of subsequent grantees who agreed to pay. They are all held liable to the mortgagee under their covenant. *Merriman v. Moore*, *supra*." *Willock's Estate*, 58 Pa. Super. 159.

¹⁸ *Pollock on Contracts*, Third American Ed., p. 260, note 6; *Jones on Mortgages*, Seventh Ed., Sec. 760.

¹⁹ *First M. E. Church v. Isenberg*, 246 Pa. 221 (1914).